UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

March 10, 2022

USCIB SUBMISSION: FORCED LABOR ENFORCEMENT TASK FORCE [DOCKET NO.DHS-2022-0001] NOTICE SEEKING COMMENTS ON METHODS TO PREVENT THE IMPORTATION OF GOODS MINED, PRODUCED, OR MANUFACTURED WITH FORCED LABOR IN THE PEOPLE'S REPUBLIC OF CHINA, ESPECIALLY IN THE XINJIANG UYGHUR AUTONOMOUS REGION, INTO THE UNITED STATES

USCIB promotes open markets, international trade and investment, competitiveness and innovation, sustainable development, and corporate responsibility, supported by international engagement and regulatory coherence. Our members include primarily U.S.-based multinational companies and professional services firms spanning every sector of the economy, with global operations and supply chains touching every region of the world. Our member companies generate $5 trillion in annual revenues and employ over 11 million people worldwide. As the sole U.S. affiliate of the International Chamber of Commerce (ICC), the International Organization of Employers (IOE), and Business at OECD, USCIB provides business views to policy makers and regulatory authorities in the U.S. and worldwide.

USCIB emphatically supports the objectives to prevent, identify, and eradicate forced labor globally. We applaud the bipartisan commitment to ensure effective implementation of the Uyghur Forced Labor Prevention Act (UFLPA), and overall desire to achieve effective and efficient enforcement of Section 307 of the Trade Act of 1930, as amended, (hereinafter, "Section 307") by Customs and Border Protection (CBP). USCIB members, deeply committed to eradicating forced labor, in any form, from their supply chains, devote significant time and resources to identify and address the risks of forced labor and other potential violations of International Labour Organization (ILO) core conventions that comprise the 1998 ILO Fundamental Principles and Rights at Work are not in their supply chains. Many USCIB member companies have worked for decades to establish, execute, and continuously improve corporate operational due diligence, exercise reasonable care, and undertake other corporate programs that are intended to identify and eliminate forced labor across their supply chains. USCIB members have been recognized for their innovative efforts in this area. These efforts take time and significant investment and cannot be put in place overnight. In many cases, companies are expected to regulate suppliers' behaviors where governments have failed to do so effectively. This poses a significant challenge as companies have limited ability to influence state actors but effectively can influence private entities. Thus, an effective strategy to combat forced labor is a joint partnership between the U.S. government and the trade community to each apply pressure in its respective spheres of influence. The trade community cannot solely address state-sponsored forced labor.

USCIB members continue to address the systemic challenges of forced labor in a variety of ways, including through voluntary initiatives and innovative partnerships. These companies have global supply and value chains covering a wide range of suppliers, commodities, products, inputs, and sectors.

We appreciate the opportunity to provide inputs in response to the above-referenced Federal Register Notice (FRN). This consensus submission to the Forced Labor Enforcement Task Force (FLETF, or the Task Force) in developing an effective strategy to prevent the importation of goods made in whole or in part using forced labor, not only from the Xinjiang Uyghur Autonomous Region (XUAR), but wherever it may exist. To that end, our comments focus on the measures implemented by CBP heretofore under Section 307, the forced labor import prohibition, more broadly, including the limited rebuttable presumptions contained in the UFLPA and the

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Countering America's Adversaries Through Sanctions Act (CAATSA),[1] and responds based on knowledge and/or expertise, to questions included in the FR Notice. USCIB supports compliance consistent with Section 307, working cooperatively and in partnership with CBP, and believes that the rebuttable presumption in both the UFLPA as well as CAATSA should be aligned under a singular approach to Section 307. The key to achieving a functional, improved enforcement process is for the business community and the government to work together, in partnership and actively engage early in a cooperative effort to remove forced labor from supply chains. Moreover, members of the trade community will benefit from and indeed need clear regulations and guidance to assist in setting up effective compliance programs.

USCIB actively supports the United Nations Guiding Principles on Business and Human Rights ("UNGPs"), the OECD Guidelines for Multinational Enterprises, and the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which together articulate internationally agreed, shared responsibilities for business conduct. USCIB strongly advocates for the development of effective laws, regulations, and policies to eliminate forced labor linked to supply chains.

USCIB believes that U.S. funding and support of the ILO – and of the Department of Labor's International Labor Affairs Bureau and the Department of State's Bureau of Democracy, Human Rights, and Labor and Trafficking in Persons Office – are significant and important to address the challenge of forced labor. Equally important is a transparent, predictable, and effective enforcement mechanism for Section 307. At a time of increasing economic and political fracture, a time when democracy needs to be promoted and defended, respect for and implementation of rule of law is critical.

USCIB submits that the Task Force strategy should enhance the current Section 307 enforcement mechanism employed by CBP to include the trade community as a partner to eradicate forced labor. Historically, when faced with difficult to resolve challenges such as drugs concealed in shipments; human trafficking in cargo containers; or terrorism threats and weapons of mass destruction, the U.S. government, primarily through CBP, has worked in close partnership with the trade community. This partnership and collaboration have yielded effective approaches that have helped to address these difficult and complex challenges. However, CBP has not similarly engaged with– importers – the entities best positioned to help eradicate the import of goods produced with forced labor – on Section 307 enforcement. Considering that the eradication of forced labor is a responsibility shared across multiple U.S. government agencies, real partnership on forced labor issues needs to be re-established by CBP and extended to the other responsible government agencies.

The USCIB recommended border enforcement process is aimed at leveraging the existing regulatory and legal structure to involve industry during the initiation of investigations. This engagement would allow industry to use its purchasing power or "power of the purse" to push for changes that would contribute more effectively to eradicating forced labor versus imports simply being stopped at the border. More detail on the USCIB recommended Withhold Release Order (WRO) process are found in the Proposals for Section 307 Implementation, (Section 1 below).

CBP is an enforcement agency; when officials initiate an investigation, they view such action as a law enforcement action. As a result, during an investigation, CBP officials maintain that they cannot cooperatively engage with any entity that may be under investigation because CBP may need to act later to detain their goods. CBP effectively creates a "black box" from which importers are excluded. Importers are not provided any opportunity during the investigative phase to share information about their own due diligence, nor to demonstrate the goods were not

[1] U.S. Dept. Homeland Security, "CAATSA Title III Section 321(b) FAQs", February 11, 2021.

produced with forced labor, nor are they provided with the opportunity to investigate and remove a potentially offending practice from their supply chains before shipments become subject to detention proactively further.

Our submission includes proposals for Section 307 implementation; other general comments related to CBP and enforcement; and inputs on some of the specific questions based on knowledge and/or expertise raised in the FRN.

USCIB stands ready to work with the U.S. government agencies on the Proposals for Section 307 Implementation as provided below and provide inputs into all CBP related matters, including but not limited to, the development of Guidance as mandated by the Uyghur Forced Labor Prevention Act.

1. PROPOSALS FOR SECTION 307 IMPLEMENTATION

USCIB has developed member supported proposals for implementation of 19 U.S.C.§1307 in responses to industry experiences with CBP since the Trade Facilitation and Trade Enforcement Act (TFTEA) was signed into law in 2016. These proposals have been broadly vetted and approved by USCIB members. The content and context provided below have been shared directly with CBP and an array of Congressional members and staff. Members of the trade community have waited for the issuance of a regulatory package for updating Section 307 regulations for several years. The Task Force should incorporate these proposals into the Guidance as well as direct incorporation into regulation. We assert that the strategy should be developed not only to address the state-sponsored forced labor that has occurred in China, but also any instances of forced labor wherever it may be found. We stand-ready to work with the U.S. government agencies to implement these proposals.

I. ALIGNING REGULATIONS TO CURRENT BUSINESS PRACTICE

The following recommendations are intended to support the continuation of a broad public/private alliance against forced labor. They are meant to provide guidance on changes to the current regulations that would make the greatest impact on preventing the importation of goods made with forced labor, while also providing more stability and certainty for the trade community. The specific areas of existing regulations that are a focus of these recommendations are:

(1) Improved process for filing allegations;
(2) notification of allegations;
(3) opportunities for rebuttals and remediation;
(4) improved timelines and evidentiary standards prior to WRO issuance;
(5) clear procedures for products to be removed from a WRO;
(6) understanding as to what penalties may be considered in cases related to forced labor, how reasonable care may be used as a defense, and confirmation that entities acting exclusively as sales platforms (third-party sellers, retailers, and licensors) are outside of the realm of penalties;
(7) clarity on the meaning of "in part";
(8) alignment of these policies with internationally accepted business and human rights principles, including the UN Guiding Principles on Business and Human Rights and others already endorsed by the U.S. Government; and
(9) in general, providing room for greater input from all stakeholders, particularly the trade community, before, during and after forced labor actions are taken by CBP.

A. REGULATORY UPDATE PROPOSALS UNDER THE CURRENT LEGAL FRAMEWORK, INCLUDING AREAS FOR INCREASED FOCUS ON REMEDIATION

1. *Issue:* Need for Clear and Enhanced Standards for Valid Allegations from the Public

Regulations on forced labor provide that *any* person outside CBP who has reason to believe that forced labor merchandise is being imported into the U.S. may communicate this to the agency. Public input must include:

1) A full statement of the reason for the belief;
2) a detailed description or sample of the merchandise; and
3) all pertinent facts obtainable as to the production of the merchandise abroad.

These criteria should be expanded and elaborated upon to ensure that allegations are well-developed, based on facts, and made in good faith as set out below.

Proposal

To ensure the appropriate deployment of CBP's resources and to help avoid unintended consequences of actions related to insufficient evidence or inadequate investigation methods, CBP should only consider allegations that are supplied with:

a) Information that is verifiable, credible, and demonstrates firsthand awareness of the alleged violations;
b) on-the-ground data collection from a statistically reasonable sampling of affected workers conducted by established labor rights experts;

c) data should include the location of the alleged violation (including the address, where possible), the affected population, the parties responsible, the precise nature of the alleged violation, the date range of the alleged violation (including evidence that the alleged violation is ongoing), and evidence that it is a systemic and not isolated incident; and
d) evidence that the goods at issue are destined for the United States.[2]

2. *Issue:* Notice of Initiated Investigation and Initial Steps Following an Allegation

Current regulations require CBP to "consider representations offered by foreign interests, importers, domestic producers, or other interested persons" following the filing of a forced labor allegation. 19 C.F.R §12.42(d). However, CBP's current practice is not to provide information about the allegations and initiated investigations, thus not allowing input from other interested parties following an allegation. Therefore, in the instance where an allegation leads to a WRO, the initial WRO standard calling for "reasonable but not conclusive" evidence takes only into consideration the accuser's information. As a result, impacted importers are typically unaware that import restrictions or forced labor allegations are under consideration until a WRO has been issued.

CBP regulations also do not currently differentiate between forced labor allegations against a specific manufacturer overseas and region or country-wide allegations. As such, CBP investigates an allegation regarding forced labor in a factory in the same manner as it does an allegation of forced labor throughout a country, notwithstanding that each will have a clearly different set of stakeholders and means through which the U.S. government and related parties may get involved.

Proposal

CBP must seek to engage with the principal stakeholders associated with any WRO investigation – whether against a specific company or region or country-wide. As mentioned before, these stakeholders include appropriate agencies within the U.S. government such as Office of the U.S. Trade Representative (USTR), Department of Labor, and Department of State and members of the trade community in general, both through confidential outreach to companies directly, and through outreach to business associations that may be able to collectively speak for businesses in general regarding country or region wide investigations.

As the present regulations also entail, CBP and other agencies of the U.S. government should also engage with foreign governments in attempting to resolve perceived instances of country or region wide problems. All these actions aim to provide the U.S. government with a more informed decision in terms of the potential impact of an importation ban, even if temporary, particularly on those individuals who might be caught in forced labor situations.

Where an issue may be more aptly handled outside of a formal investigation process, for example where the issue has been identified in the past and different stakeholders are actively working to remediate the problem, or where the allegations may not raise to the level of considering a WRO, CBP may continue to engage informally with stakeholders in seeking to address any issues outside of a WRO.

[2] Consideration should also be given to language that CBP should NOT consider acceptable to initiate an investigation such as:
(a) Unspecific tips that fail to identify and provide credible data sources.
(b) The presence of potential indicators of forced labor without substantiation of an actual forced labor issue.
(c) The Department of Labor List of Good Produced by Child Labor or Forced Labor.
(d) Sensationalistic media stories; or
(e) Other uncorroborated allegations that cannot or have not been specifically verified by the submitter of the information.

However, in instances where CBP is considering the issuance of a WRO, the agency should seek to establish a more robust, multi-stepped process of investigation with more well- established timelines for stakeholder participation. CBP may consider updating this part of the regulations to establish new steps for stakeholder engagement prior to the issuance of a WRO.

The proposed multi-stepped process may be circumvented by CBP in instances where there is reasonable belief of criminal activity on the part of the importer, when there is a substantial likelihood of flight risk on the part of the involved parties or when there is evidence of a government sponsored systemic forced labor program or a country has been determined to be committing crimes against humanity such as a State Department declaration of genocide. However, in all other cases, engagement would allow CBP to work with the trade community to address, remove and eradicate forced labor from the supply chain in most forced labor issues that are presented to the agency.

Moreover, the timelines proposed here would be a minimum time period, but CBP may have the flexibility to extend these deadlines depending on the complexity of the issue and the level of engagement from the identified parties in attempting to resolve the issues.

1. **Announce the initiation** of a review based on allegations deemed acceptable according to objective and transparent standards and which merit investigation (See Recommendation No. 2 above). When the allegations are against a company or set of companies, or if a company may be importing from a region, a country, or an industry product subject to the allegations, CBP or the appropriate member of the Task Force should alert the potentially impacted businesses, both the foreign company and the U.S. importer, but maintain strict confidentiality. CBP should provide companies with a minimum of 60 days to either refute or remediate the allegation. When combined with the proposed actions below, this would establish a timeline for engagement where one does not exist today.

2. Within no less than 60 days, if initiating an investigation, CBP shall **issue a preliminary determination** and provide no less than 60-day, at least, for comment period, without threat of disclosure repercussions other than inadmissibility of the goods, and/or for a remediation period by the trading community.

3. Not earlier than 120 days later, CBP will **make a final determination** if CBP has determined after investigation and consultation with the Task Force that such WRO is merited. Parties will have at least 60 days to submit a remedy; and

4. Final **issuance and notification of a WRO**.

ADDITIONAL DETAILS

1. Announce initiation of an investigation:[3]

CBP should issue notice when it has decided to pursue an official investigation under Section 307. It should provide this notice in two forms: first, to the public, with very limited information, and second, where possible, directed privately to interested parties, specifically:

(1) any specific producer(s) named as part of the allegation, and
(2) any named users of the product.

Any impacted parties will have at least 60 days to demonstrate to CBP that they have addressed and remediated the concerns within their own supply chains, or evidence that the goods were not made with forced labor.

The CBP public announcements, when it undertakes a new investigation under its Section 307 authority, should be done either via website, press release, or Federal Register Notice. This public notice should be limited and simply name:

(1) the commodity under investigation,
(2) the alleged site or region of the violation (unless this would reveal the name of a party), and
(3) whether the investigation was self-initiated by CBP or whether it was prompted by an allegation filed by an outside party.

CBP should also list publicly the specific factors that will be considered in its investigation, including (adapted from Executive Order 13126):

- the nature of the information describing the use of the prohibited class of labor;
- the source(s) of the information;
- the extent the submitted information has been confirmed by outside sources;
- confirmation that the information involved is more than an isolated incident; and
- whether recent and credible efforts are being made within the country or industry to address the prohibited class of labor to support collaborative efforts to further investigate and address the prohibited labor practice.

As to the private notices, potentially interested parties to be notified of the allegation should include the entity directly accused of importing the violative good, or a user of the commodity at issue that may have the affected material in its supply chains (as importer of record [IOR] or further downstream). The direct notice by CBP should provide:

[3] The purpose of this engagement is to encourage the impacted parties to act in response to the allegation, using their leverage to support the timely remediation of the forced labor concerns. If the allegation is an isolated incidentthat can be addressed, for example, through a change to labor policies related to retention of passports of foreign workers, CBP's engagement with the affected parties would serve to improve working conditions but maintain the source of income for those foreign workers. This tool may also assist CBP engage actors when informal ways to doso have not had adequate response, or when CBP is planning to move towards issuance of a WRO irrespective of any prior engagement with other stakeholders.

(1) a summary of allegations,
(2) how CBP plans to investigate,
(3) an estimated timeline under which CBP expects to conclude its preliminary investigation,
(4) additional information available on the alleged violation (such as location, timeframe/date, and precise nature of violation) to assist the entities involved in identifying and addressing the alleged forced labor violations, and
(5) notice to the potential respondents that while the agency is open to receiving comments from these directly affected parties, a failure to respond at this stage of the proceeding will not be held against the importer or other affected parties.

This more detailed notice should be kept strictly confidential.

2. Preliminary determination

Within no less than 60 days of announcing the initiation of an investigation, CBP shall notify all parties (public and private) whether it has made a **preliminary finding** of forced labor. In such cases, CBP, with input from the Task Force, should seek not only to penalize and enforce but also to **remediate problems.** At the investigation initiation stage, companies should be incentivized to engage with CBP and other relevant U.S. government agencies and demonstrate a willingness to comply and to remediate any problems. Good faith actions by companies should be taken into consideration as potential reasons to suspend WRO, Findings, or penalties decisions.

Impacted parties will have at least 60 days, although CBP may have discretion to extend timelines depending on the issue presented, to address potential concerns, work with CBP to identify at which stage of the supply chain the continued forced labor appears, demonstrate all actions taken internally to address and remediate potential forced labor issues and supply documentation regarding specific shipments and suppliers.

As in the previous step, any information shared with CBP during this period shall not be viewed as part of a prior disclosure or be taken as evidence of forced labor in the supply chain. In the instance of any subsequent final determination or Finding, CBP may not use such information as a precondition for penalties.

3. Final Determination

CBP shall issue within no less of 120 days from announcing the initiation of an investigation its determination. Such notice shall provide at least 60 days for targeted importers to submit information to CBP demonstrating the elimination or remediation of any forced labor in its supply chain if feasible under the circumstances.

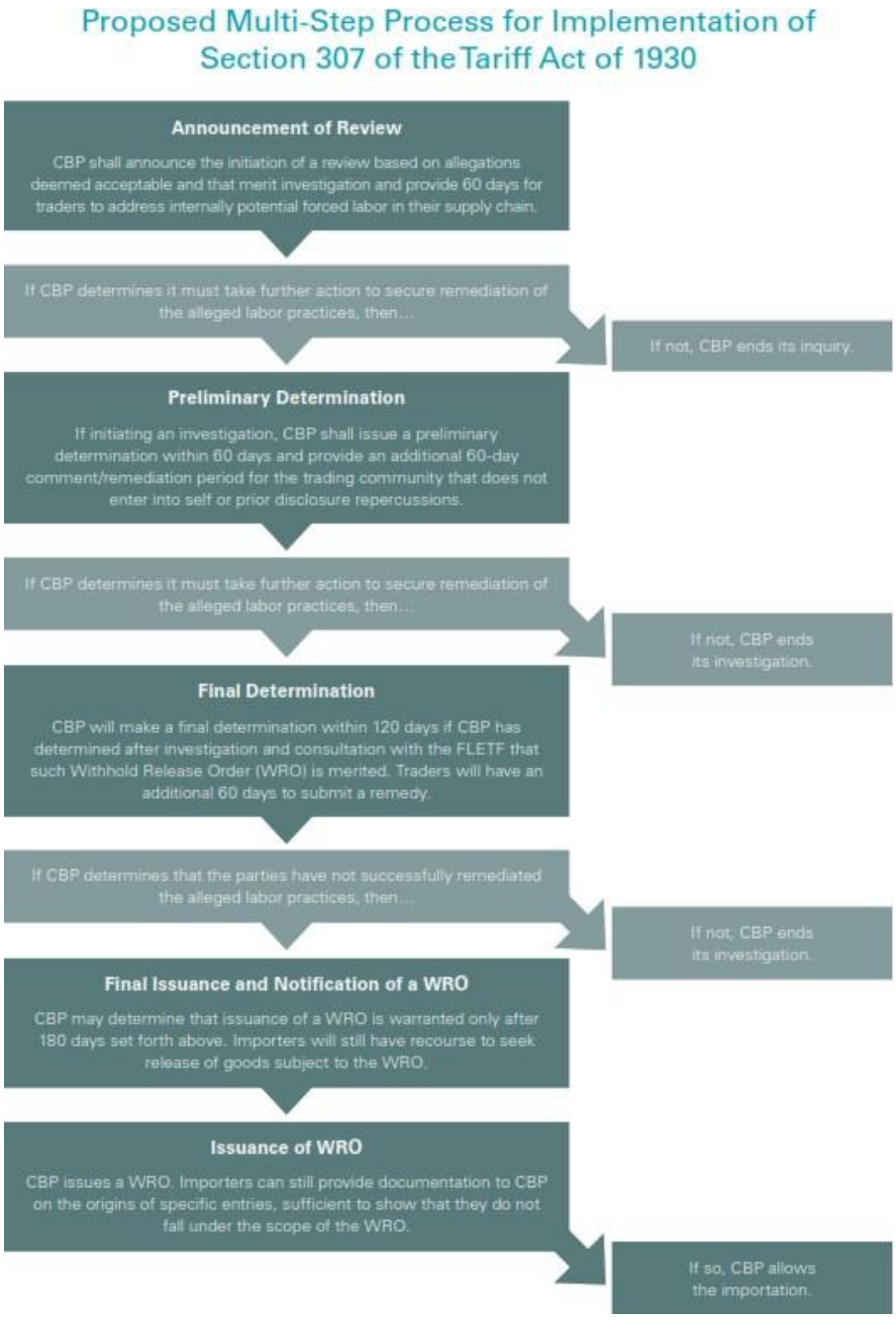
WROs should be supported with either (a) a recitation of the evidence and reasons supporting it, or (b) detailed supporting material, supplemented with the results of further investigation undertaken.

4. Issuance of WRO

CBP may determine that issuance of a WRO is warranted in no less than 180 days as set forth above and no action can be taken retroactively to the start of the investigation. The Task Force and similar types of interagency review must take place prior to the issuance of a WRO. This process notwithstanding, importers will still have recourse to seek release of goods subject to the WRO and goods that are entered during the investigation process shall not be subject to the WRO but only those goods entered from the date the WRO is issued.

Absent a cooperative and partnering relationship, importers will be faced with either discontinuing sourcing from the company, industry, region, or country (a cut and run mentality which does nothing to address the forced labor) or destroy or re-export the goods --neither of which addresses the issue of forced labor. The objective of the law and the objective of importers is to ensure that no forced labor is in their supply chain.

Figure 1 - Proposed Multi-step Process Prior to WRO



3. *Issue:* Release of WRO Text

Currently, Section 307's implementing regulations only require the publication of Findings in the Federal Register. While CBP posts some information about WROs online, it does not make the texts of WROs available to the public, including to parties whose goods may be withheld pursuant to Section 307.

Proposal

Under the proposed multi-step process, CBP would provide details on initiated investigations and preliminary and final determinations as part of its deliberative process. However, CBP should still provide the importer of a blocked shipment with a copy of the WRO that serves as the basis for CBP's action, so the importer – the one impacted directly and immediately by the action – could see the evidentiary basis for the action. However, we recognize the sensitivities of the information contained in a WRO and do not recommend that the document be released publicly. The importance of providing more details upon issuing a WRO issuance is even more critical if the multi-step process outlined previously is not implemented and instead the agency continues using most of the 1963 regulatory framework.

4. *Issue:* Establish Timeline for Proving/Providing Documents for Proof of Admissibility

Under the current regulatory framework for Section 307, the importer of goods detained by CBP under a WRO has three months from the date of import to respond to CBP and submit additional documentation refuting allegations that the merchandise was produced with a prohibited class of labor. CBP has no deadline to reply, either after the three months or once it has received a complete response by the importer. This undetermined period opens the importer up to potentially significant costs related to detention, contract breach, deterioration of the goods, and overall business uncertainty.

In addition, CBP is currently not required to provide the importer with information as to what evidence the agency considered in making the WRO determination. This means that CBP may, in theory, detain a shipment of shirts because it believes the cotton in it was made with forced labor, but the importer is not aware of this and would not be able to supply the appropriate rebuttal.

Finally, the certification of origin requirement mandates that the importer state that the manufacturer produced the good at a certain location and that forced labor was "not employed in any stage of the mining, production, or manufacture of the merchandise or of any component thereof." 19 C.F.R. §12.43. This mandate is a vestige from the 1963 regulations and may not be aligned with the reality of 21st century supply chains.

Proposal

As envisioned in the final multi-step process above, once a WRO is issued, importers would still have the burden of proving that forced labor does not exist in their supply chain. Unless there is evidence of fraud or criminal action, CBP should have an affirmative duty upon issuing a WRO to provide the importer with the evidence that it has considered in its determination. Where there is a component that is believed to be made with forced labor, CBP must disclose such information.

Proper due diligence programs in place by the importer prior to the WRO should be enough to prove the absence of forced labor in the importer's supply chain, unless CBP has direct evidence showing otherwise. Such programs may include supply chain risk mitigation strategies, human rights policies, responsible supply chain policies, stand-alone forced labor policies, certifications, social compliance audits, corrective

action plans, supply chain labor clauses in contracts, industry or other collaborative initiatives with other U.S. government agencies, industry or multi-stakeholder associations, and NGOs or international organizations working on addressing forced labor.

Furthermore, upon receiving a complete response by the importer, the agency must determine within thirty-days whether it may release the good or whether it will continue to detain the good until a Finding is issued. Perishable and seasonal goods should also be granted with an expedited review process if one is requested by the importer.

After issuance of a WRO and at any point prior to the issuance of a Finding, CBP should also allow goods covered under a WRO to be moved to less expensive, but safe warehouse options. Daily accrual of storage charges can be the determining factor on whether an importer chooses to support the entry or not. By failing to provide the importer with less expensive storage options, CBP may not be able to obtain additional and valuable information from the importer because the costs of storing outweigh any potential to get involved.

Without a detailed description by CBP of the evidence that it is considering as the basis for a potential WRO and, in the case of a component, where the forced labor problem is believed to be located, the certification of origin requirement may subject the importer to additional liability and should thus be eliminated. Furthermore, elimination of the certification of origin should be granted because such statement is inherent to any response to a WRO by an importer. Thus, the certification requirement is at best perfunctory and redundant.

5. ***Issue:*** **Allow possibility for Destruction of Merchandise**

Upon WRO action, the importer may contest the action or export the goods. However, the regulations do not appear to permit destruction of the merchandise until 60 -days after a notice is issued to the importer informing the importer that proof of admissibility is deemed insufficient.

Proposal

An importer may decide that instead of contending or exporting the goods, it is more appropriate to destroy the merchandise. CBP must permit this destruction to take place under its supervision. If some merchandise must be kept for additional investigation, CBP must consider the smallest possible sample size required and allow the destruction of the remaining merchandise. The responsibility for storing any merchandise mandated to be retained by CBP for evidence or any other purpose after the importer has requested destruction of the merchandise will be passed on to CBP.

6. ***Issue:*** **Establish Timeline for Findings to be Issued**

In the current regulatory scheme, a Finding is issued when it is determined that the merchandise is subject to the forced labor provisions. However, there are no factors or standards outlined as to how CBP is to arrive at such conclusion. Furthermore, there is no established timeline regarding the issuance of Findings. As such, WROs remain indefinitely. Moreover, CBP actions related to Findings allow for additional evidence to be submitted even at that time, but it is not clear how or what impact additional evidence could have once the "conclusive" stage has been reached.

Proposal

Before issuing a Finding, CBP must also consider remediation efforts by the importer and related supply chain partners. The focus should be to prevent the worst forms of forced labor, but also to highlight efforts to improve and to properly respond to forced labor problems and contrast those against other truly bad actors. Findings should only be issued if there is a complete absence of an importer's risk mitigation program, human rights policy, supply chain monitoring program, or commonly utilized programs that address remediation and reasonable care. If a Finding is issued, the importer should still be permitted to protest the finding and receive notice as currently stipulated in the regulations.

7. *Issue:* Clarity on Penalties and the Reasonable Care Standard

The *Customs Modernization Act of 1993 (Mod Act)* makes the importer responsible for using reasonable care in its claims with CBP, but it also imposes upon CBP a mandate to keep the trade community clearly and completely informed of its legal obligations. The regulations currently in place related to forced labor do not clearly and completely inform the trade community of its legal obligations. Informed Compliance Publications (ICPs), Fact Sheets, Frequently Asked Questions, Seminars, and any other public service communications issued by CBP that are not grounded in a modern regulatory scheme or aligned with U.S. government-endorsed and internationally - accepted principles such as the UN Guiding Principles on Business and Human Rights are insufficient, both in practice and in terms of legal standards.

CBP may assess penalties under § 1592 based on negligent, grossly negligent, or fraudulent false statements or omissions. However, it remains unclear how CBP could reach a § 1592 penalty in a forced labor case where importers are not required to make affirmative statements regarding compliance with § 1307. Penalties could be assessed under § 1595A(b) if CBP establishes a violation of law, or 1595A(c) if CBP executes a forfeiture.

Proposal

CBP should acknowledge that § 1592 penalties do not apply to violations of §1307 because importers do not make statements at entry regarding the presence or absence of forced labor in their supply chains. To the extent that CBP were to identify a false statement or material omission regarding forced labor in a supply chain, penalties may not be assessed when the importer demonstrates reasonable care in their statements or omissions regarding the goods' compliance with the law upon entry, 19 U.S.C. § 1484 (a)(1). In determining whether an importer used reasonable care and whether to assess penalties under § 1592, CBP must consider the importer's due diligence program that aims to prohibit, assess, and remedy, if applicable, forced labor that may be connected to their supply chains.

Furthermore, under § 1595A, penalties may be assessed for importations generally contrary to law, regardless of reasonable care. However, to enforce a penalty under Section 1595A, CBP must demonstrate an actual violation of Section 1307, not merely a reasonable suspicion. Moreover, CBP should make clear that penalties under section § 1595 shall be reserved only for instances of fraud or criminal action when a Finding of forced labor has been issued

It is not clear which penalty mechanisms CBP may invoke when enforcing the UFLPA. Therefore, guidance must be provided to the trade community clearly stating how and under which provisions CBP will enforce the law.

When invoking penalty provisions CBP should be required to take into account due diligence programs and reasonable care efforts on the part of the importer. Due diligence program elements that CBP may take into consideration either to avoid penalties under § 1592 or mitigate penalties under § 1595A may include: supply chain risk mitigation strategies, human rights policies, responsible supply chain policies, stand-alone forced labor policies, certifications, social compliance audits, corrective action plans, supply chain labor clauses in contracts, industry or other collaborative initiatives with other U.S. government agencies (e.g. CTPAT or CTPAT-ISA), industry or multi-stakeholder associations, NGOs or international organizations working to address forced labor. These standards should be published in a stand-alone ICP that includes input from the trade community and build upon U.S. government- endorsed principles such as the UN Guiding Principles on Business and Human Rights and the OECD's Guidelines for Multinational Enterprises.

In determining penalties, CBP should also provide clearer guidelines regarding enforcement against third-party sellers, retailers, and licensors, confirming that they are carved out from enforcement for those goods that fall outside of their supply chains and for which they serve only as a sales platform, location or venue, or as intellectual property providers.

8. *Issue:* Determine Scope for Redelivery Notices

The law mandates that a port director may recall merchandise not entitled to admission into the commerce of the U.S. for any reason before the entry liquidates. 19 C.F.R. § 141.113(d) and (h).

Proposal

There should be a presumption of release for goods. Recall of merchandise or redelivery based on evidence of forced labor should only be used in cases where there are imminent health, safety or consumer risks involved. Unsubstantiated public allegations regarding the presence of forced labor should be deemed insufficient to apply the redelivery notice due to alleged forced labor because of the high likelihood that the evidence presented is subjective.

9. *Issue:* Clarity on the Relation Between Prior Disclosure and Forced Labor

The law is not specific about whether prior disclosures benefits can apply to companies on matters related to forced labor.

Proposal

New regulations should provide that forced labor related prior disclosures would not be subject to penalties in instances when the violator demonstrates remediation and sets in place standards that are likely to impede a similar violation from occurring. During the preliminary determination phase, any information on the supply chain provided to CBP shall not be used against the importer or to accelerate the issuance of a WRO. Information provided to CBP should act as evidence that no WRO is to be issued when the importer takes appropriate measures to remediate the problem and the importer has provided assurances that the problem is not likely to repeat itself.

10. *Issue:* Additional CBP Engagement with the Private Sector

CBP engages with the private sector on issues related to forced labor policy and actions primarily through the Commercial Customs Operations Advisory Committee's (COAC), its Subcommittees and respective Working Groups (i.e., Forced Labor Working Group and Trusted Trade Working Group).[4] In other areas of concern, CBP has partnered with the trade community to try to address and eradicate problems such as drug trafficking, human trafficking, and weapons of mass destruction in supply chains. These examples of previous successes should be replicated for forced labor.

Proposal

COAC's Forced Labor Working Group and Trusted Trader Working Group have worked to provide private sector perspective to CBP on the matter of forced labor and trusted trader trade compliance program, respectively. However, COAC's mandate is very limited in scope, its existence is only temporary, and it is limited in terms of forced labor expertise. Moreover, while the Forced Labor Working Group has previously made recommendations to the COAC on issues related to forced labor, CBP has used its discretion in implementing them. CBP should consider more formal engagement with the broad trade community on this topic, in addition to the COAC structure, with stakeholders who have demonstrated expertise in addressing forced labor in global supply chains and others, focusing both on corporate social responsibility and customs compliance.

In addition, strict non-disclosure of the objectives, work product, action plan, membership, and priorities should be relaxed to allow for more extensive cross-sectoral collaboration, alignment, learning, and impact on preventing forced labor.

11. *Issue:* Define "In Part"

The current law related to forced labor states that goods made by forced labor "wholly or in part" shall not be entitled to entry into the U.S. There is no definition for what "in part" means. If a good contains even an insignificant trace of an input alleged to have been made with forced labor, or when the forced labor allegation is for an input that is several degrees removed from the final production and where visibility is unattainable, the law as written could be interpreted to find that the final product has been made with forced labor and the importing company may be liable.

Proposal

The U.S. trade community remains strongly committed to identifying and remediating all sources of forced labor found in their supply chains. However, legal certainty is necessary in instances when the alleged forced labor may be on an input that is minimally used in, or is far distant from, the final production, and for which it is unattainable or impractical for the importer to have full visibility into that portion of the supply chain. The legal uncertainty generated by what should be understood by "in part" is one issue that the government has considered in the past, as evidenced from an October 11, 1983, Department of Treasury Memo related to potential regulatory updates on forced labor.

[4] The make-up of the 16th term of the COAC has been preleased. At this time, the Subcommittees and/or Working Groups are yet to be determined. The Forced Labor and Trusted Trader Working Group were active in the 15th COAC and were reconstituted from the 14th COAC.

The use of tools, factories, energy, or other means that were themselves made with prohibited labor to produce the merchandise will not make the merchandise excludable. In addition, the merchandise is excludable if any part or component is made with prohibited labor, ***except where the part or component is de minimis****. Such a rule would comport with the construction given by the Court of International Trade to the term "in part." It would also permit the Treasury to invoke more easily the 1307 exclusion and shift to the importer and producer the burden of proving that the imported article is not "in part" of the offending component by establishing that the economic contribution of the prohibited labor to the article is de minimis.*

Implementation of a definition for "in part" that is not overbroad will help focus enforcement and address problems at the most immediate level of production. This approach is by no means to be interpreted as a way to alleviate the need of importers to comply, nor from their responsibility to know their supply chains. Instead, the goal is that the term "in part" be implemented in conjunction with thoughtful reasonable care and due diligence standards, and under a program that promotes remediation and sustainable development. Also defining "in part" more specifically may increase cooperation between industry and CBP to allow the agency to focus its attention and resources on the most significant instances of forced labor.

12. *Issue:* Remedy and Inconsistency with Internationally Accepted Principles

The current law and CBP enforcement actions do not encourage or support efforts to remedy potential or actual forced labor issues. This approach is contrary to commonly accepted principles by the trade community, the U.S. government and civil society at-large such as the UN Guiding Principles on Business and Human Rights.

Proposal

By failing to incentivize remediation, importers seeking to avoid potential penalties will be inclined to sever the relationship with the supplier upon detecting a potential indicator of forced labor connected to their supply chain. This action by the importer removes the importer's use of their leverage to remedy the situation. Such outcome is contrary to the U.S. accepted UNGP, which states in part:

Numeral 13*. The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts.*

In addition, the commentary to Principle 19 provides further guidance on how businesses should address these situations:

"Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practice of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, product, or services by its business

relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprises' leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences."

CBP, either on its own or through the Task Force, should align its efforts with U.S. government- endorsed and internationally - accepted guidelines in considering whether to undertake an investigation and to pursue a WRO enforcement action. Specifically, CBP's enforcement actions should be aligned with the UNGP and the OECD's Guidelines for Multinational Enterprises, and the agency should support a remediation approach, rather than a "cut and run" approach, where companies completely abandon the market. Importers that are actively seeking to use their leverage to support remediation of a forced labor issue should not be prioritized for enforcement action.

2. GENERAL AND SPECIFIC COMMENTS

Following, we offer general comments on implementation of Section 307, including the UFLPA rebuttable presumption, and responses to questions set out in the FRN based on USCIB knowledge and/or expertise.

USCIB is committed to working with all U.S. government agencies that have Section 307 related responsibilities on the development of UFLPA mandated strategy and guidance. USCIB is interested and available in providing technical inputs to CBP on the topics addressed in this submission, including but not limited to the USCIB Proposals and development of the UFLPA Guidance for Importers.

Government-to-Government Engagement. The U.S. government has a responsibility to manage relations with other nation state actors. This expectation of the government is reasonable and grounded in the government's responsibility to identify and manage state-driven forced labor related risks. The entire effort to deter forced labor should not simply be put on members of the trade community. State-to-state engagement and leadership is fundamental on the topic of forced labor. None of these CBP enforcement efforts and requirement should eliminate the U.S. government's overall multiple agency engagement with other governments on both a direct and political level.

21st Century Supply Chains. We no longer live in an era where a finished good is manufactured in one country and components are sourced locally. Today's supply chains are complex, often multi-layered and differ vastly across industries. Finished and intermediate goods can cross customs' borders countless times during the manufacturing process before they are ultimately imported into the commerce of a country. Consideration should be given to those importers that may lack supply chain tools to impact or direct contractual control over far-removed suppliers. Additionally, an importer may sometimes be only one of several buyers sourcing from a manufacturer or producer, and in those scenarios, the importer's leverage will be significantly diminished. Among the contributing factors for successful supply chain analyses are leadership commitment, financial resources, availability of expert staff to undertake costly analysis, and well-defined rules informed by transparent dialogue between business and government and consultation with civil society.

Many USCIB members find the strongest correlation between positive outcomes of their country-specific corporate human rights efforts with levels of good governance and rule of law. In other words, the greater the performance of a host government on issues like labor law enforcement, the greater the likelihood that company proactive labor and human rights initiatives will deliver meaningful results for workers.

Moreover, as articulated in our Implementation Proposals above, the certification of origin requirement included in the existing Section 307 regulations is a vestige from the 1963 regulations and may not be proper for 21st century supply chains.

Data and Information Quality. The fact that we live and operate in an imperfect universe of timing, information quality and sharing, and data presentation at every node in the supply chain must be recognized. U.S. government guidance based on an increasing standard of concern better matched to audit, review, and verification levels would be helpful.

Clear Guidance to the Trade Community – Informed Compliance Publication. The standard of care expected from the trade community has been defined by nearly three decades of rulings, court cases, and engagement between CBP and the trade community. It is this mutual responsibility that has made the import supply chain, and more broadly the country, safer, while not constraining or overburdening importers, which would be detrimental to trade and our economy. Members strongly assert that reasonable care should remain the prevailing standard, to fulfil the Mod Act's "shared responsibility" standard. CBP must provide meaningful informed compliance guidance that enables the trade community to achieve and sustain a high degree of compliance by providing clarity and focus on the underlying requirements, expectations, and processes that CBP applies. In the current supply chain environment, CBP must also recognize that certain operational policies, processes, procedures and/or requirements may directly contribute to disruption and delays in importers supply chains.

Past USCIB submissions called for issuance of an ICP[5] on forced labor. Moreover, the trade community in general has requested issuance of a robust Informed Compliance Publication(s) as well as increased seminars, webinars, and slick sheets/factsheets, to inform importers what they need to do to fully comply with the law (e.g., what documents are necessary for proof of admissibility). This ICP should go beyond the general questions currently provided in the What Every Member of the Trade Community Should Know About: Reasonable Care[6] and should develop (1) a meaningful tool for importers of all sizes and for all shipments, regardless of value; (2) support clear and effective compliance by all importers; and (3) clarify the evidentiary standards applied for enforcement actions to be initiated. Moreover, as CBP works to develop this ICP, inputs from all stakeholders need to be considered to ensure the guidance addresses the key questions and concerns of the trade community. This issue is addressed in more detail in the USCIB Implementation Proposals.

Clear Guidance to the Trade Community Through FAQs. We applaud DHS efforts to develop and document, a clear set of FAQs which focused on CAATSA Title Ill Section 32l(b) and which affects the entry of merchandise produced by North Korean nationals or citizens. The FAQs provide in part, that "CAATSA reiterates the need for comprehensive due diligence by and on behalf of U.S. companies involved in importing goods. Careful consideration of, and reasonable care with respect to, the different risks

[5] As per respective ICP webpages, "This document may qualify as a "guidance document" as set forth in Executive Order 13891 and interpretations thereof; such guidance documents are not binding and lack the force and effect of law, except as authorized by law or as incorporated into a contract. This document is being posted to this portal to provide stakeholders with useful information."

[6] U.S. Customs and Border Protection, "Reasonable Care", October 25, 2017.

presented in your supply chain should always be taken into account when importing into the United States." [7] This FAQ was last updated in February 2021.

The DHS CAASTA FAQs are valuable to importers as are the FAQs developed by CBP tied to, for example, a specific tier-1 enforcement action (i.e., WROs). However, these FAQs should be periodically reviewed and when changes are made, ensure the trade community is informed as to where and when changes to the FAQ have been made.

Significant changes to existing CBP FAQs have been made without notification or transparency on the impacts of the changes to members of the trade. Compliance efforts are complicated when importers must regularly print FAQs on a given enforcement approach and conduct a side-by-side comparison to determine where words or sections have been changed. A change history and Cargo Systems Messaging Service (CSMS) messaging as well as other communications tools would make FAQ changes visible and transparent to importers which rely on the information published by CBP.

List of Questions for use with Suppliers. Members have expressed the need for a clear, defined, list of questions, developed by CBP and made publicly available to the trade community in multiple languages for use with suppliers. For example, CBP could offer specific tracing questions, similar to the industry developed standard questions for conflict minerals, to provide confidence and consistency with respect to the questions asked to suppliers, including how such questions are phrased and presented. There is precedence for this suggestion in how CBP has established and translated into multiple languages CTPAT requirements (i.e., Minimum Security Criteria or MSC question sets). Even with varying expectations between industries and tier level suppliers, knowing which questions will be posed and how will aid in garnering answers that are responsive to the requirements of CBP. Further, this approach will enable consistency in how responses are provided so that suppliers do not misinterpret the same question when asked in different ways which could result in inconsistent responses that are then passed on to the importers.

CBP Communications to the Trade Community and Improvements for Greater Transparency. Importers of all sizes rely on CBP publications and communications to support their efforts to secure the most expedited cost-effective movement of goods across borders in full compliance with import requirements. Since passage of TFTEA, when the consumptive demand "loophole" was closed, CBP has undertaken improvements on their Section 307 related publications, including the WRO and Findings website. On CBP's updated WRO and Findings website, the inclusion of a "status" column as well as linking to press releases is helpful as is the new transparency on revocation and modification of WROs. To make this an even more valuable tool for the trade, inclusions of all the entities, which encompasses a full list of subsidiaries and affiliated parties, covered by the enforcement action as well as the text of WRO or enforcement action is critical. Moreover, while Findings require publication in the FRN and Customs Bulletin, importers have no advance notice on WROs, often putting importers in a position of learning about the enforcement action after the ports have been notified and enforcement has commenced. Please refer to the WRO text comments provided in our Implementation Proposals for additional details

[7] U.S. Dept. Homeland Security, "CAATSA Title III Section 321(b) FAQs", February 11, 2021.

COAC Working Groups – Forced Labor and Trusted Trader. The 16th COAC membership has just been announced.[8] The Subcommittee and Working Group structure has yet to be established or reconstituted.

USCIB suggests that the mandates for these working groups continue as in prior iterations, and specifically, "*COAC's Forced Labor Working Group and Trusted Trader Working Group have worked to provide private sector perspective to CBP on the matter of forced labor and trusted trader trade compliance program, respectively. CBP should consider more formal engagement with the broad trade community on this topic, in addition to the COAC structure, with stakeholders who have demonstrated expertise in addressing forced labor in global supply chains and others, focusing both on corporate social responsibility and customs compliance*."[9] In addition, the work of the respective subcommittees and/or any future structure[10] under the new COAC on a Trusted Trader Trade Compliance Forced Labor program will benefit most from a shared discussion carried out in conjunction and collaboration between the Trusted Trader Working Group and the Forced Labor Working Group. In addition, as provided in the USCIB Proposals for section 307 Implementation above, item I.A.8, "CBP should consider more formal engagement with the broad trade community on this topic, in addition to the COAC structure, with stakeholders who have demonstrated expertise in addressing forced labor in global supply chains and others, focusing both on corporate social responsibility and customs compliance."

For any Trusted Trader Trade Compliance Program for Forced Labor, which has been under discussion between CBP and the trade community for some time, it is important that CBP identifies what due diligence processes a company can implement to be deemed as trusted and receive the related benefits for obtaining such a status. The program standards should include published due diligence and sustainability reports; and certified audit practices. The tangible benefits actually provided to the trade though this voluntary program is an ongoing topic of debate. However, benefits could include:

- Acceptance of audit reports from the company, where they are legally permitted to provide them, as evidence of compliance;
- In addition to the provisions identified in the USCIB WRO process improvements (above) aimed at engaging trade stakeholders earlier in the investigation process, advance notice of an investigation related to their importations should be presented 30 days prior to enforcement action similar to CBP's rate advance process when a change of duty rate will be implemented:
- An expedited protest period; and
- Presumption that all documentation from the importer in question are accurate.

"For clarity, the work of the COAC, its subcommittees, and working groups is carried out under strict NDAs limiting companies from internal discussions and associations from increased member engagement and dialogue."[11] The strict non-disclosure of the objectives, work product, action plan, membership, and priorities should be relaxed to the extent possible to allow for more extensive cross-sectoral collaboration, alignment, learning, and impact on preventing forced labor.

[8] U.S. Customs and Border Protection, "CBP is pleased to announce the members of the 16th term of the COAC", February 1, 2022.
[9] USCIB Proposals for Section 307 Implementation, "Additional CBP Engagement with the Private Sector", item I.A.8.
[10] U.S. Customs and Border Protection, "CBP is pleased to announce the members of the 16th term of the COAC", February 1, 2022.
[11] USCIB Proposals for Section 307 Implementation, "Additional CBP Engagement with the Private Sector", item I.A.8.

Total Entered Value Bond. In addition to being able to move goods to lower cost warehousing, the importer should be able to post a bond equivalent to the total entered value (TEV) of the shipment and move the goods to their own location to maintain the goods during the evidence review or investigation process with CBP. There is precedent for this approach as it relates to the bond for limited exclusion orders (LEO) under the Section 337 process. Consideration should be given to the creation of a new bond type.

UFLPA Guidance. CBP is required to provide guidance to importers with respect to:

- (A) due diligence, effective supply chain tracing, and supply chain management measures to ensure that imports are not entered for any goods mined, produced, or manufactured wholly or in part with forced labor in the PRC, especially from XUAR;
- (B) the type, nature, and extent of evidence that demonstrates that goods originating in the PRC were not mined, produced, or manufactured in whole or in part in the XUAR; and
- (C) the type, nature and extent of the evidence that demonstrates goods originating in the PRC, including goods detained or seized pursuant to Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) were not mined, produced, or manufactured wholly or in part with forced labor.

It is imperative that this Guidance be provided to importers prior to implementation of the rebuttable presumption and submission of the strategy at 180 days after the enactment of the Act, or before June 21, 2022. Clear guidance in advance of implementation is not only reasonable but critical for an importer to effectively comply with the law and requirements. In addition, CBP must effectively and publicly communicate, in writing, how shipments already "on the water" (i.e., that have already left the port and are en route to the United States) will be treated in advance of implementation of the rebuttable presumption, so that importers are operating with a clear understanding.

Section 307 is a priority for many USCIB Committees. For example, guidance and direction to CBP regarding implementation has been a priority of the USCIB Customs and Trade Facilitation Committee since passage of TFTEA. Over the years, USCIB has provided significant guidance and direction on Section 307 regulations and their implementation to CBP. USCIB welcomes the continued opportunity to serve as a subject matter expert and technical resource for CBP during the development of the Section 307 related UFLPA Guidance. We believe that the multi-sectoral and global view of USCIB members (e.g., experiences related to real-world transactions) will benefit the development of workable UFLPA Guidance for importers.

Certainty in Forced Labor Determinations and Reasonableness of Enforcement. In applying the authority provided to the U.S. government pursuant to the UFLPA, the Task Force is required to identify entities and regions outside of Xinjiang to which the rebuttable presumption will apply. Such determinations must be made with reasonable certainty to avoid innocent entities being included in the new enforcement measures. The risk of over enforcement is significant as it will exacerbate current inflationary pressures, port disruptions and backups, and harm legitimate global supply chains.

Prioritization of Importers. In the event of detention and seizure of goods pursuant to Section 307 or the UFLPA, members assert that CTPAT or Trusted Trader participants should be prioritized in terms of review of admissibility packages and documentary evidence.

Phased-in Approach to Implementation. "CBP enforces hundreds of U.S. laws and regulations, including customs, immigration, trade, and drug laws. In addition to its own regulations, CBP's enforces more than 500 laws for 47 Federal agencies, in coordination with these agencies."[12] In addition to the need for clear guidance to the trade before implementation of the rebuttable presumption, consideration should be given to a prioritization or focus to phased-in implementation based on risk, which is something that the trade advocated for and achieved as it relates to the Lacey Act.[13] In addition, CBP has taken a phased-in approach to the Importer Security Filing (ISF), which was co-created with the trade. In other words, goods that are directly exported from XUAR would be a priority over goods exported from a third country which may be suspected of containing inputs somewhere in the supply chain that were made in XUAR.

Enforcement Prioritization. Under Section 2 of the UFLPA, the Task Force is required to publish several lists of entities and industries (sectors) that it believes are engaged in or use forced labor, or that are a high priority for enforcement. As part of the enforcement strategy to be published on June 21, 2022, the Task Force should:

(1) clarify that the rebuttable presumption under the UFLPA is only applicable to entities specifically included on UFLPA Section 2 lists (*i.e.,* the presumption does not extend to affiliates or subsidiaries of listed entities, unless those affiliates or subsidiaries are specifically included/ provided for on the relevant list);
(2) in addition to identifying industries, include specific products or product types that are high priority and avoid the use of overly broad terms which could be interpreted to expand the scope of the actual products of concern;
(3) provide specific and substantiated reasons why listed entities, industries, sectors, and product types were included;
(4) prior to initiating list-based enforcement, provide industry with a reasonable time to review Section 2 lists and take appropriate action; and
(5) institute a 180-day grace period before future additions to Section 2 lists become effective. *Without reasonable notice (e.g., 180 days) the supply chain disruptions could worsen and further hurt the economy and U.S. consumers*.

Clarity Around Voluntary Abandonment and Destruction. 19 C.F.R. 127.12(b) allows for *the voluntary abandonment* and relinquishment to the U.S. of any merchandise the possession of which has been taken by the port director, at the request of the consignee or owner or master of the vessel or vehicle in which the goods were imported. 19 C.F.R. 127.14(a)(2) provides for destruction of merchandise that has been government ordered, when such merchandise has no commercial value. 19 C.F.R. 12.44 (current Section 307 regulations) refers to "deemed abandonment" taking place 60 days after notification of decision that proof of admissibility not met.[14] It is not clear that the regulations covering voluntary abandonment and destruction of goods address goods subject to WROs. USCIB recommends clarifying treatment in regulations.

[12] Cannon House Office, "Written Testimony of CBP Deputy Comm. And ICE Deputy Dir.", April 8, 2015.
[13] U.S. Dept. of Agriculture, "Lacy Act", December 21, 2021.
[14] USCIB Proposals for Section 307 Implementation, "Allow Possibility for Destruction of Merchandise", item I.A.5.

UN Guiding Principles.[15] The most widely endorsed set of principles related to identifying and addressing human rights issues, such as forced labor, is the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs are grounded in three pillars:

> a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms; [State duty to protect]
>
> b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; [Business responsibility to respect]
>
> c) The need for rights and obligations to be matched to appropriate and effective remedies when breached. [Access to remedy]"

The U.S. government strongly endorsed these principles and references them frequently.

As we have previously noted in the Implementation Proposals, "CBP, either on its own or through the Task Force, should align its efforts with U.S. government-endorsed and internationally-accepted guidelines in considering whether to undertake an investigation and to pursue an enforcement action. Specifically, CBP's enforcement actions should be aligned with the UNGPs and the OECD's Guidelines for Multinational Enterprises, and the agency should support a remediation approach, rather than a cut-and-run approach. Importers that are actively seeking to use their leverage to support remediation of a forced labor issue should not be prioritized for enforcement action."[16] Our proposed structure for enforcement under the WRO mechanism above meets these principles, prevents a cut and run approach and employs the trade in helping to eradicate and address instances of forced labor in supply chains.

USG should support, work & coordinate with business and other stakeholders in developing a diplomatic strategy. Enforcement actions (e.g., WROs) are far down on the forced labor continuum - well after the abusive practices have occurred. USCIB has and continues to urge approaches focused on encouraging national level implementation of Decent Work and effective enforcement of national labor laws.

As USCIB has stated we welcome the wealth of information and guidance to government policy makers, which reflects their key role of enacting well-designed and effectively enforced legislation, law enforcement, policies and social programs towards the eradication of child and forced labor that meet international standards that the DOL provided when it published its 2020 child and forced labor reports.[17] Further, as the Trafficking Victims Protection Reauthorization Act (TVPRA) List rightly asserts, "greater enforcement on the part of governments leads to greater compliance on the part of businesses" (page 15) – governments must proactively initiate a virtuous cycle, lead by example and prioritize early detection and remediation."

[15] USCIB and U.S. Chamber of Commerce, Letter to the Bureau of International Labor Affairs, U.S. Dept. of Labor, January 14, 2022.

[16] COAC, Intelligent Enforcement Subcommittee Forced Labor Working Group Industry Collaboration Whitepaper, July 2020.

[17] USCIB and U.S. Chamber of Commerce, Letter to the Bureau of International Labor Affairs, U.S. Dept. of Labor, January 14, 2022.

USCIB urges the U.S. government to fully utilize all levers of influence to work with allies, bilaterally and within the multilateral system, to identify incentives for governments to pass, implement and enforce national laws that reflect international labor and human rights standards. Such an approach supports U.S. government goals linked to the Summit for Democracy initiative, and its "aim to show how democracies can deliver on the issues that matter most to people: strengthening accountable governance, expanding economic opportunities, protecting human rights and fundamental freedoms, and enabling lives of dignity."[18]

Further, as included in the USCIB 2021 Rule of Law Paper:[19]

- "UN Sustainable Development Goal 16, 'Peace, Justice and Strong Institutions,' makes clear the key role that governance and the rule of law play in promoting peaceful, just and inclusive societies and in ensuring sustainable development. Despite the many government high-level pledges to promote human rights and decent work in line with International Labor Organization (ILO) standards, however, national-level implementation remains poor in far too many countries.

- "In the face of government governance gaps, U.S. businesses are rising to the task and expanding their individual and collective efforts to advance responsible business conduct globally. Our shared goal of the realization of human rights and labor rights for everyone everywhere will remain unacceptably elusive, however, unless we also holistically address root cause governance issues." [20]

The 2021 G7 Trade Ministers Statement includes, "We recognise the important role of governments to eradicate forced labour, protect victims of forced labour, and improve global supply chain transparency and the implementation of the principles of business and human rights, as recognised by the UNGP. Governments can help achieve these goals through sharing risk-management tools, encouraging the collection of data and evidence, upholding international labour standards in their own business operations and procurement policies, and including respect for international labour standards in their assessments of publicly funded projects." [21]

In an October 2021 association letter to the Department of State and USTR regarding the Forced Labor G7 communique the criticality of U.S. government leadership was stated explicitly. "U.S. government engagement with countries to encourage joint coordinated policies to combat forced labor and human trafficking and promote international cooperation to condemn state-sponsored forced labor is a critical element of the diplomacy necessary to end modern slavery. We believe that U.S leadership in multilateral fora and support for multi-stakeholder efforts to address forced labor and human trafficking are particularly impactful. U.S. engagement in multilateral organizations such as the International Labour Organization (ILO) and U.S. support for the Global Fund to End Modern Slavery (GFEMS) are critical elements of the worldwide joint effort between governments, civil society, and the private sector to address modern slavery." [22]

[18] USCIB et al. Letter to Anthony Blinken and Katherine Tai, October 21, 2021.
[19] USCIB Crosscutting Policy Briefs, "Advancing Human Rights and Rule of Law, Leveraging Supply Chains", 2021.
[20] USCIB Crosscutting Policy Briefs, "Advancing Human Rights and Rule of Law, Leveraging Supply Chains", 2021.
[21] United Kingdom Government, "G7 Trade Ministers' Statement on Forced Labor", October 22, 2021.
[22] USCIB et al. Letter to Anthony Blinken and Katherine Tai, October 21, 2021.

Paradigm Shift. In recent years, CBP has shifted the paradigm for Section 307 enforcement to require importers prove- unequivocally and completely – that their shipments are not produced with forced labor, without other preliminary consultation or other recourse. This requirement cuts against the long-standing tradition of cooperation between trade officials and the business community to ensure efficient movement of goods across borders. We hope that our proposal can help to rebalance that relationship to one of consultation, cooperation, and partnership.

Additional Transparency Considerations. Clear standards of evidence need to be established for CBP's detention under Section 307 enforcement actions (i.e., WRO or Finding) as well as the Section 307 related UFLPA rebuttable presumption. These published standards should limit CBP's authority to detain to circumstances where there is specific, targeted, substantiated, and articulable evidence, like those necessary to meet CBP's threshold for formal Findings of forced labor.

Building upon the provisions included in the USCIB Proposals for Section 307 Implementation above, CBP should establish a mechanism to share allegations and evidence with the affected companies and importers, allowing for fairness, due process, and the presentation of documentation necessary to rebut the alleged presumption of forced labor. The mechanism should include: (i) a requirement that CBP notify the importer if an incoming shipment is being targeted; and (ii) provide an opportunity for the importer to rebut the presumption, by, *inter alia,* submission of documentation to CBP for consideration before goods are subject to detention.

In addition, we believe the Task Force should disclose the tools and assessments, including those utilized by other U.S. government agencies, on which it relies to identify covered entities and products that will be named on the UFLPA Section 2 lists to identify shipments that fall within the scope of the rebuttable presumption under the UFLPA.

CBP should establish and maintain a list on its website, updated weekly, containing the Harmonized Tariff Schedule of the U.S. (HTS) codes of products detained in connection with UFLPA enforcement actions, supporting CBP's informed compliance approach. This list should also include a clear revision history and be a "push communication", where CBP would leverage existing communications tools (e.g., CSMS) to push out information to members of the trade community.

RESPONSES TO FRN. We appreciate that the FR Notice includes a list of questions to the public to assist in the development of comments. We understand that the list is non-exhaustive, not mandatory and/or not intended to restrict stakeholder inputs. We offer some USCIB consensus inputs below and stand-ready to engage with the involved U.S. government agencies to address the points in greater detail, as well as to provide inputs on specific proposals to implement UFLPA.

1. What are the risks of importing goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China, including from the Xinjiang Uyghur Autonomous Region or made by Uyghurs, Kazakhs, Kyrgyz, Tibetans, or members of other persecuted groups in any other part of the People's Republic of China?

State-sponsored forced labor heightens challenges companies face in addressing suppliers' [e.g., the State] use of forced labor and the stakes in terms of possible brand and reputational damage. The risks of importing remain similar as for all products subject to Section 307 enforcement; however, the rebuttable presumption and requisite evidentiary standard embodied in the law increase the risks as it will be far more difficult to rebut the presumption. Some concerns that give rise to the potential impacts and increased risks include, but are not limited to:

Lack of Clear Evidentiary Requirements for Proof of Admissibility. CBP has failed to provide clear and consistent, general (i.e., non-sector or non-WRO specific) guidance to the trade regarding applicable evidentiary standards and what is needed to meet each level under existing law. We must ensure that under the UFLPA that is not the case. Since passage of TFTEA and CAATSA's rebuttable presumption, USCIB has been advocating for clear communication to the trade on 1) evidentiary standards for issuance of an enforcement action by CBP; and 2) clarity around the evidentiary standards to prove a shipment is not made with forced labor (i.e., proof of admissibility) under Sections 307 and as it relates to CAATSA provisions (i.e., clear, and convincing evidence). We assert that the Task Force should issue clear guidance on the documents or other evidence used in the normal course of business that CBP will require from companies - importers to rebut the presumption that detained products were produced using forced labor.

Associated with this point is the need for a **positive list of possible documents**, noting all sectors are different, **or other information** that can be used as **proof to clear a shipment**. We believe that this list of evidentiary proof should be applicable across all sectors and industries and should be limited to standard commercial documents, collected in the normal course of business that are not considered business confidential. This list could include, for the purposes of illustration and not limitation, documents such as those used to:

- establish a product's country of origin under U.S. substantial transformation standards;
- comply with U.S. import requirements; or
- reflect contractual relationships in support of production and procurement activities (e.g., contracts, purchase orders, and invoices).

Further, we believe a CBP level policy should be established which indicate that that not all identified documents or information on such a list are required to be presented to rebut the presumption or other enforcement actions. Documents listed ***should not include*** those where disclosure would result in a violation of laws applicable to parties in the supply chain. Furthermore, members have raised concerns regarding CBP requesting documents that they are prohibited from sharing under foreign law, including documents which the importer does not "own" outright (e.g., audit reports), transportation documents that raise information concerns, and/or other documents (e.g., timecards or walked perimeters of private farms).

For documents included on any ICP list, there should be a clear identification of the function each of the identified documents or information serves in rebutting the presumption. Doing so will provide transparency on how CBP will use the documents in adjudication of its enforcement actions under Section 307.

Further, attention should be given to the fact that small and medium-sized businesses may not have adequate resources to create systems that do not rely on documents and information collected in the ordinary course of business, and that such companies may be forced to abandon importing entirely even if the imported products are not made with forced labor.[23]

Moreover, USCIB notes, with concern, CBP presumptions that documentation alone cannot prove the goods are admissible. CBP's lack of understanding regarding manufacturing operations results in accusations that some component "could" still have made it into a supply chain. For example, accusations that inputs produced in a third country and shipped to China for intermediary manufacture "could" have been comingled with offending inputs, when in reality, that is not likely given supply chain operations and cost constraints. The Task Force should engage supply chain and other experts when developing its guidance so that the guidance reflects supply chain complexities and how companies can effectively address human rights issues using existing standards and frameworks for supply chain due diligence.

Third-Party Allegations. Building upon the information provided in the USCIB Proposals for Section 307 Implementation,[24] a framework and procedural limitations for the receipt and consideration of third-party allegations of forced labor needs to be established. To deter third parties from abusing the process to support anti-competitive activities through submitting unfounded allegations, CBP protocol should warn parties that false allegations or bad faith submissions claiming goods were made with forced labor will be investigated and referred to the U.S. Department of Justice for prosecution under 18 U.S.C. §1001.

Errant Detentions. As previously stated in our July 2021 Congressional Testimony,[25] *"USCIB's process recommendations would help address mistaken detentions by CBP for commodities not associated with enforcement actions (i.e., the affected shipment is not linked to the country and/or commodity targeted by the WRO). Improperly detaining a shipment for 5-6 days in a bulk commodity storage facility could impose seven-figure costs with concomitant negative impacts on consumers. USCIB has examples of importers who have had substantial portions of their inbound inventory incorrectly detained for months. Such delays can threaten the existence of small to medium sized businesses and lead to full or partial shutdown of manufacturing operations, distribution centers, logistics providers, transportation companies, and vendors of all sizes. impacting U.S. jobs."* During this current period of heighted supply chain concerns, CBP should be focusing enforcement efforts in a way that does not harm the U.S. economy. USCIB believes that by involving the trade early in the investigation process of alleged forced labor in production will help alleviate this problem.

Reputational and Brand Damage is a Significant Risk, including the harm associated with releasing importers' names to the press or in Congressional briefings. Additionally, as included in the July testimony, "Current CBP enforcement practice creates uncertainty with sourcing risks and/or commitments, even when a supply chain is later proven 'clean,' which could result in increased costs, scarcity, increased

[23] USCIB Crosscutting Policy Briefs, "Advancing Human Rights and Rule of Law, Leveraging Supply Chains", 2021.
[24] USCIB Proposals for Section 307 Implementation, "Need for Clear and Enhanced Standards for Allegations from the Public", item I.A.1.
[25] USCIB, "Lowry Serves as Witness at Hearing on Forced Labor in Supply Chains", July 2021.

volatility in sourcing due to unpredictability, and in some cases could hamper efforts to source inputs important to the U.S. economy. The current enforcement approach may discourage R&D activities and could lead to delays in global product launches." There is no indication as to how a supplier could be removed from the "list" that CBP is compiling, thus ruining a business.

In addition, any Task Force should include a clarifying note stating that shipments detained or returned to their origin while under UFLPA review, does not conclusively indicate the involvement of forced labor. An importer's decision to choose to re-export may be for various commercial reasons unrelated to potential enforcement action.

Civil and/or Criminal Penalties. The FLETF and CBP should make more clear what penalties may assess beyond prohibiting entry of goods that cannot demonstrate were not made with forced labor from XUAR. DHS has indicated that it has authority under 18 U.S.C. Section 1589 to bring criminal penalties against persons regardless of whether an importation of goods has occurred. Separately, for one civil penalty CBP recently made public in relation to a Section 307 matter, CBP did not express the legal basis for the penalty.[26] More generally, although the FLETF has indicated CBP can bring civil actions under 18 U.S.C. §1589 and 19 U.S.C. §1595A in connection with forced labor imports,[27] USCIB believes neither of these statutes should apply in connection with a mere failure to overcome the UFLPA rebuttable presumption, for the same reasons discussed earlier. The U.S. government should provide clearer guidance in this area. CBP must issue regulations on Section 307 enforcement (pending since passage of the Trade Facilitation and Trade Enforcement Act in 2015) and the UFLPA as the baseline to issue informed compliance manuals. These should be completed prior to the effective date of the UFLPA.

Inability to Destroy Shipments. If importers are not allowed to export inadmissible merchandise, it must be clear that they are allowed to destroy it. Protection of intellectual property rights (IPR) and market availability are essential. Goods cannot be seized by CBP only to later be sold at auction or otherwise be inserted into the market. Further, any action by an importer to export or destroy goods should not be interpreted by CBP as an admission of guilt, but the current manner of preventing forced labor goods from entering the U.S. is through the issuance of a detention which allows only three months for admissibility documents to be assembled and submitted, and for CBP to make a determination. This short time frame may result in importers determining they would rather export or destroy the goods than risk goods being seized by CBP because documents are delayed or deemed inadequate by a CBP official despite meeting all documentation requirements set forth.

Additional Due Diligence Considerations. Guidance published by the Task Force should take into account commercial and geopolitical constraints and include specific, actionable steps, companies - importers can take to: (i) determine whether a product was produced, in whole or in part, using forced labor; (ii) establish and present evidence to rebut the presumption of such forced labor; and (iii) provide as an indication of appropriate due diligence when conducting site-level assessments or audits is not possible (e.g., due to security concerns or risk of governmental retaliation).

[26] U.S. Customs and Border Protection, "CBP Collects $575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor", August 13, 2020.

[27] U.S. Dept. Homeland Security, "Implementing Section 742 of the United States-Mexico-Canada Agreement Implementation Act - Report to Congress", July 30, 2021.

USCIB strongly asserts that CBP must seek input from the trade community, not limited to the COAC process, prior to adopting any forensic, biological, or other testing technology for enforcement purposes, and, to the extent such technology is adopted with industry input, those tools or technology must be made available for use by importers.

2. To the extent feasible, as part of the assessment of risks, what mechanisms, including the potential involvement in supply chains of entities that may use forced labor, could lead to the importation into the United States from the People's Republic of China, including through third countries of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor?

Most importers have a clear line of sight into their tier one suppliers. Some goods undergo multiple processing and manufacturing operations that are unknown to the importer, particularly for goods that are mined and for which only minute traces of the product may be incorporated into a finished good (e.g., widget A or widget B). The multitude of parts that are incorporated into a complex finished good challenges current manufacturing norms. All brands do **not** want forced labor in their supply chains, but the short time frame to try to secure visibility into the tier 5, 6, or 10 suppliers and have that documentation readily available for presentation to CBP is a Sisyphean struggle. Further, deception from national producers to U.S. importers and/or China legally prohibiting its national firms from complying with laws such as UFLPA, could lead to such imports. USCIB members are aware of the Chinese Communist Party (CCP) acting against Chinese companies that comply with U.S. buyers' requirement to eliminate XUAR produced goods in the supply chain.

3. What procedures can be implemented or improved to reduce the threats identified in Question 2?

As mentioned previously, a "de minimis" standard should be established both in terms of value, volume, and integral use for the finished product. The de minimis definition would not lead to increased use of offending inputs but would ensure that goods otherwise produced almost entirely of admissible content would not be unnecessarily detained or excluded. Increased transparency, and prior-approved auditing firms/protocols could improve the responsible sourcing practices identified in the response to question 2 above. CBP should recognize third party audits secured by importers as valid and indicative of the operations being performed at the factories. Auditors have augmented their procedures, questionnaires, and practices to ensure that the ILO forced labor indicators are a part of the review process. The U.S. government should also employ modern and evolving technology that can help ascertain the origin of a good. These technologies/tests should not be borne by the importers but by the U.S. government.

***7. What unique characteristics of such high-priority sector supply chains, including cotton, tomato, and/or the polysilicon supply chains, need to be considered in developing measures to prevent the importation of goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China*?**

In the context of Section 307, generally, and UFLPA, specifically, the issue of commingled commodities has not been effectively addressed. We believe this is an area where increased collaboration between CBP and the trade is required to effectively and fairly implement the law and regulations. It would be worth CBP's effort to work with industry and other stakeholders to gain a more complete understanding of the realities of product supply chains and the potential for sourcing or production of inputs from other regions that were not produced with forced labor.

One example for consideration is agricultural products that are grown in XUAR as well as many other provinces. A blanket assumption that any product imported from China which had such agricultural inputs was made using inputs from XUAR must not be the norm as the inputs may have been appropriately sourced from another province. The diligence needed to establish sources of inputs can be advanced through the efforts of the U.S. government in collaboration with other like-minded governments to establish better understandings as to the growth and production of the subject products throughout China. Such understandings and information could then be shared by the U.S. government to assist importers. Further, this increased knowledge sharing and understanding with the Chinese government and industry would help demonstrate to the U.S. government those goods produced from other parts of China may not have been transshipped or commingled with goods from the impacted region and/or produced with forced labor. These points have been advanced to CBP by the COAC Forced Labor Working Group in a July 2021 White Paper and related Recommendations.[28] USCIB urges all U.S. government agencies to review and support advancement of these Recommendations.

8. How can the United States identify additional entities that export products that are mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region or by entities that work with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor, or receive forced labor?

The UFLPA requires the creation of a variety of lists that can be used to aid U.S. companies is eliminating such entities from their supply chains. In addition, information from in-county embassy personnel, government intelligence, qualified on-the-ground consultants and engagement with our allies and civil society could aid in identifying additional entities believed to export such products. However, all allegations should be thoroughly investigated by the U.S. government independently with outreach to U.S. entities that may be impacted in order to collaboratively determine if there is forced labor in the supply chain. Further, any identification of offending entities must allow for regular review and a process for remediation and removal from the list.

[28] COAC, Intelligent Enforcement Subcommittee Forced Labor Working Group Industry Collaboration Whitepaper, July 2020.

9. How can the United States most effectively enforce the UFLPA against entities whose goods, wares, articles, or merchandise are made wholly or in part with forced labor in the People's Republic of China and imported into the United States?

The U.S. government can aid in the effective enforcement by providing the trade with (1) lists developed in accordance with UFLPA of all entities and subsidiaries identified as using forced labor, (2) clear guidance to the trade as required by the provisions of UFLPA as to what information will demonstrate that there is no forced labor in the supply chain, (3) a robust ICP in plain language which is understandable, digestible, and easily implementable by both the new-to-import parties as well as by the experienced importers, (4) a cooperative program with the trade that helps to detect without fear of retribution any supply chains that may have forced labor; (5) priority review for CTPAT or Trusted Traders; and (6) protections to ensure that importers that export or destroy or abandon goods are not "targeted" by CBP as violators and admitting culpability.

CBP should develop a clear and transparent compliance framework that supports the FLETF guidance, to be included in any ICP. Such a framework should include:

- a priority list of products or commodities, at the 8-digit HTS level or an equivalent description of commodities, that are most likely to be targeted for UFLPA enforcement;
- apart from the exiting ruling process, a formal, voluntary pre-clearance regime for importers to obtain advanced clearance or safe harbor for certain products, suppliers, or manufacturers or factories, to the extent possible, through proactive provision to CBP of information and documentation for review and guidance; and
- a prior disclosure program that encourages complete and accurate voluntary prior disclosures by (i) mitigating or eliminating the risk of an enforcement action; and (ii) negating potential penalties for all levels of perceived culpability, except fraud.

As it relates to prior disclosures, refer to USCIB Proposals for Section 307 Implementation I.A.7 above, "the law is not specific about whether prior disclosures provide any benefit to companies on matters related to forced labor". Moreover, there are and have been varying views within CBP departments. To date, a common position has not been established. The trade community's view is that Section 307 is not covered by existing prior disclosure provisions.

Any formal pre-clearance voluntary regime should provide as follows:

- Pre-clearance requests should receive automatic approval within a reasonable, predetermined time period (e.g., 30 days), unless CBP requests additional information or denies the pre-clearance;
- If CBP does not respond within 30 days, goods subject to a pre-clearance request will be presumed to be eligible for entry:
- Pre-clearance will enable importers to include the review period in their logistics plans, resulting in less supply chain disruption; and
- Noting that there are many commercial reasons why a company or importer may decide not to use this voluntary regime, such a decision should not be a factor in targeting enforcement activities.

10. What efforts, initiatives, and tools and technologies should be adopted to ensure that U.S. Customs and Border Protection can accurately identify, and trace goods entered at any U.S. ports in violation of section 307 of the Tariff Act of 1930, as amended?

We believe the USCIB proposed WRO process, as well as other regulatory proposals, are efforts, initiatives, and/or tools that should be adopted to aid CBP in identifying goods that may enter the U.S., while at the same time actually contributing to the goal of eradicating forced labor.

11. What due diligence, effective supply chain tracing, and supply chain management measures can importers leverage to ensure that they do not import any goods mined, produced, or manufactured wholly or in part with forced labor from the People's Republic of China, especially from the Xinjiang Uyghur Autonomous Region?

Efforts to ensure effective supply chain tracing, and supply chain management measures importers can leverage may include, for example:

- Internal corporate policies concerning forced labor, human rights, and responsible supply chain, including management commitment to good labor practices, direct worker engagement, and the use of a grievance system, such as a hotline;
- Internal training for procurement, purchasing, and other relevant associates on risks of, and corporate policies relating to, forced labor;
- External-facing policies for suppliers concerning forced labor and human rights, such as a supplier code of conduct or supplier reference guide;
- Supply chain labor and compliance clauses in contracts with all first-level suppliers, including cancellation clauses in the event of supplier breach or non-compliance;
- Recurring forced labor risk assessments based on a review of information released by the U.S. government and the importers' products and supply chains;
- Using a risk-based approach, additional supplier communications, including certifications as appropriate, training, and recognitions (i.e., communication of expectations);
- Social compliance and labor audits of first-level suppliers under a risk-based approach;
- Documentation normally retained or provided in the normal course of business;
- Audit corrective action plans addressing significant deficiencies by suppliers from internal corporate policies and external-facing policies related to forced labor and remediation engagement;
- Verification of audit corrective action plans were implemented;
- Supply chain mapping and material traceability efforts; and
- Member of industry or other collaborative initiatives with other U.S. government agencies (e.g., CTPAT or CTPAT-ISA/Trusted Trader).

However, it is important to note that some of these measures may involve or require confidential business information and/or may not be "owned" by the importer and, therefore, may not be released by the importer to demonstrate "clear and convincing evidence". Also, the extent to which some of these measures can be used across a supply chain is directly linked to the ability of a company to control and influence its suppliers through direct contractual provisions.

Moreover, it is important to note that the lack of evidence of some or all the measures included in the list of examples does not necessarily mean that other supply chain management systems are insufficient. For example, any given importer may not be able to incorporate some of the contractual terms suggested above. Thus, the list must be illustrative and not definitive and absolute to demonstrate no forced labor in a supply chain.

USCIB believes that these due diligence and other programs could be included in the mandated UFLPA Guidance. Again, USCIB offers its subject matter knowledge and expertise in the customs, trade facilitation, as well as the corporate social responsibility / labor space in support of the development of the UFLPA Guidance for importers.

12. What type, nature, and extent of evidence can companies provide to reasonably demonstrate that goods originating in the People's Republic of China were not mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region?

Please refer to information provided above. We believe that clear definitions of the evidentiary standards (e.g., clear, and convincing evidence) should be provided to members of the trade community in an easily understood, single document with supporting examples. Moreover, such evidence should focus on documents used in the ordinary course of conducting business. Members have raised concerns regarding the use of documents that they are prohibited from sharing under foreign law, including documents that the importer does not "own" outright (e.g., audit reports), transportation documents which raise information concerns, privacy matters or competitive market data, and/or other documents (e.g., timecards or walked perimeters of private farms). To reduce the amount of paperwork that has been submitted to CBP by importers, since the WRO issued against Inner Mongolia Hengzheng Group Baoanzhao Agricultural and Trade LLC in May 2016, members of the trade must have clear guidance from CBP on the types of documents necessary. This clarity will help reduce the amount of company information provided, as well as reduce company (e.g., external legal counsel) and CBP resources to collate, explain, and/or review documents unrelated to detained or seized shipments. Further, CBP should not unilaterally determine that documentation provided does not fit the "normal" documents or format they would expect. Companies have unique and not "standard" tracking mechanisms which should all be considered equally demonstrative of compliance. Currently, CBP has complained about companies doing a "data dump", while at the same time have stated that they are not getting enough data. In the absence of greater clarity with articulated definitions, the trade community will continue to struggle to comply with requirements where there is inconsistency of expectations and limited to no clear guidance.

13. What tools could provide greater clarity to companies on how importations from the People's Republic of China were not mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region? To what extent is there a need for a common set of supply chain traceability and verification standards, through a widely endorsed protocol, and what current government or private sector infrastructure exists to support such a protocol?

Supply chain standards, supply chain mapping, material traceability efforts, and regularly updated and communicated warning signs from the U.S. government could provide greater clarity to companies on whether importations from the People's Republic of China were or were not mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region; however, such tools are not 100 percent conclusive. Supply chain mapping and material tracing efforts are

dependent upon the quality of the information being provided at every node in the supply chain. Standardization and U.S. government guidance in this space would be helpful. In addition, UFLPA requires the creation of a variety of lists, which should provide greater visibility to companies, including:

- Entities in the XUAR that produce goods with forced labor;
- Entities working with the government of the XUAR to recruit, transport, transfer, harbor, or review forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the XUAR;
- Products made wholly or in part by such entities;
- Entities that exported products made with forced labor from China to the U.S.; and
- Facilities and entities, including Xinjiang Production and Construction Corps (XPCC), that source material from XUAR or the XPCC for purpose of a poverty alleviation program or pairing assistance program or any other government labor scheme that uses forced labor.

The UN Guiding Principles on Business & Human Rights are the globally adopted framework which articulates the responsibility of business to respect human rights by operating with due diligence. To support this effort, CBP could clarify its interpretation of traceability and verification standards, as informed by the UNGPs, along with the OECD Due Diligence Guidance for Responsible Business Conduct[29] and could thereby establish a baseline set of supply chain traceability and verification standards for entry of legitimate cargo. Not all goods from China are made using forced labor. XUAR is an area four times the size of California or as big as Alaska. A baseline set of standards will enable importers to maintain their compliance with the law. Absent agreed standards or greater clarity on CBP's expectations, admissibility will be left to the discretion of unguided interpretation of individual CBP officers. Further, to maximize efficiencies with CBP review, a common set of standards and interpretations will facilitate efficient and effective enforcement.

14. What type, nature, and extent of evidence can demonstrate that goods originating in the People's Republic of China, including goods detained or seized pursuant to section 307 of the Tariff Act of 1930, as amended, were not mined, produced, or manufactured wholly or in part with forced labor?

USCIB believes that clear guidance regarding what CBP will accept as "clear and convincing evidence" should be provided to members of the trade in an easily understood, single document with supporting examples. Moreover, such evidence should focus on documents used in the ordinary course of conducting business.[30] Members have raised concerns regarding the use of documents where it is a violation of foreign law to provide such, including documents which the importer does not "own" outright or which are considered business confidential (e.g., audit reports), transportation documents which raise information concerns, privacy matters or competitive market data, and/or other documents (e.g., timecards or walked perimeters of private farms). To reduce the amount of paperwork (evidence) that has been submitted to CBP by importers in response to WROs issued subsequent to TFTEA passage, members of the trade need to have clear guidance from CBP on the types of documents necessary to demonstrate that they have met the required burden of proof. This clarity will help reduce the amount of company information provided to CBP as well as reduce company (e.g., external legal counsel) and CBP resources to collate, explain, and/or review documents related to detained or seized shipments.

[29] OECD, "OECD Due Diligence Guidance for Responsible Business Conduct", 2018.

[30] See response to FRN Question 11 above for examples.

As it relates to document submissions from importers, USCIB asserts that CBP should commit to setting-up, with appropriate privacy, confidentiality, and security protections, a share file or other electronic in-take process for importers to electronically submit documentation supporting proof of admissibility (i.e., documents used in the normal course of business).

Proper due diligence programs that are implemented by the importer prior to the issuance of the WRO should be considered as a significant contributor to "clear and convincing evidence" sufficient to prove the absence of forced labor in the importer's supply chain, unless CBP has direct evidence showing otherwise. Such programs include supply chain risk mitigation strategies, human rights policies and procedures, responsible supply chain policies, stand-alone forced labor policies, certifications, social compliance audits, corrective action plans, supply chain labor clauses in contracts, industry or other collaborative initiatives with other U.S. government agencies, industry or stakeholder groups, and NGO's or international organizations working on addressing forced labor.

15. What measures can be taken to trace the origin of goods, offer greater supply chain transparency, and identify third-country supply chain routes for goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China?

USCIB represents all sectors ranging from basic agriculture inputs to the most complex high-tech products to antiques and everything in between. As such, the measures that can be taken to trace the origin of goods, offer greater supply chain transparency, and identify third-country supply chain routes are also quite variable. In some cases, technology can play a significant role. In others, broad stakeholder engagement, including with government stakeholders, can yield increased knowledge and awareness. Finally, social compliance audits remain an important measure to address a range of labor issues. In all cases, effective due diligence programs include utilizing tools that increase supply chain transparency and allow for greater traceability to help combat forced labor. Where national legislation hinders or obstructs supply chain social compliance programs, these programs can be hindered.

While tracing technologies may exist in or for some sectors, they do not equally exist for all sectors. Technology is an aid, but it has its limitations, given that no one approach is applicable to all sectors, commodities, geographies, or products. While technology may be appropriate for analyzing some types of risks, technology cannot be used to determine every aspect, including the labor conditions under which the goods were mined, produced, or manufactured wholly or in part. Supply chain mapping and material traceability efforts are dependent on the quality of information being provided at every node in the supply chain. Standardization and U.S. government guidance in this space would be helpful.

For these reasons, we reiterate the importance of varied compliance approaches but, most of all, targeted efforts to address root cause factors at national levels - including good governance and effective labor law enforcement. At a more basic level, it is important to understand the question(s) that the technology is seeking to solve. For example, while the country of origin or physical location may determine to a reasonable degree of certainty by technology, the working conditions or use of forced labor may not correlate to that determination.

USCIB continues to promote better and increased dialogue and communication with business stakeholders. As noted above, we believe that this should take place early and often including as it relates to law enforcement investigations and other enforcement actions.

When addressing human rights issues such as forced labor the UN Guiding Principles on Business & Human Rights is an important starting point. A company's efforts to address forced labor can flow from their recognition and implementation of the UNGPs.

While there may be varying views on the advancement of recommendations that exceed CBP and/or COAC's scope and remit, "[a]t present, for most U.S. importers, social compliance audits remain one of the most well-understood and widely-utilized methods of detecting forced labor (and other labor rights issues), due to the fact that they require little to no onboarding, can be deployed globally, assess for a wide range of labor rights issues, and are relatively cost-effective. Such an audit consists of three main elements: worker interviews, on-site visual inspection of facility and dormitory premises, and document review." [31]

Social compliance audits are primarily a form of issue identification and risk assessment. These audits are continuously improved through real-time experiences and learnings and continue to incorporate the ILO eleven indicators of forced labor. They are expected to be used as detection tools to inform remediation activities, which may take a wide variety of forms, from documented corrective action plans with specific deadlines to capacity-building training sessions by expert resources to deeper engagement of labor unions and beyond.

Social compliance audits may vary in their capacity, scope, and effectiveness. And, while there are numerous approaches and programs for such audits, the quality and capacity of the auditors is critical to a quality audit. To this point we highlight but one initiative underway to improve capacity, consistency, and accuracy of social compliance auditing for purposes of illustration and not limitation. The Association of Professional Social Compliance Auditors (APSCA) maintains a Code and Standards of Professional Conduct that member firms and individual auditors must uphold and tests and certifies individual auditors to a requisite level of competency.

As discussed elsewhere in this submission, members of the trade continue to believe a robust ICP on Forced Labor, which provides necessary guidance to importers of all sizes is critical. That said, CBP's Reasonable Care Informed Compliance Publication specifically asks importers:

"7. Have you established a reliable procedure of having a third-party auditor familiar with evaluating forced labor risks conduct periodic, unannounced audits of your supply chain for forced labor?"

Finally, whatever due diligence program is utilized by an importing company it should increase supply chain transparency and allow for greater traceability to help combat forced labor. Importers can facilitate greater collaboration and enhance collective leverage by sharing, when and where appropriate, their supplier lists (absent sensitive competitive information) and/or participating in disclosure platforms such as the Open Apparel Registry. Due diligence programs which include direct worker engagement also warrant enhanced credibility and standing in combating the rebuttable presumption of UFLPA. Similarly, programs that include the use of a grievance system, such as helplines and mobile apps, labor union participation, public-private partnerships, capacity-building workshops for suppliers, and other emerging efforts, warrant such credibility and standing.

[31] COAC, Intelligent Enforcement Subcommittee Forced Labor Working Group Industry Collaboration Whitepaper, July 2020.

16. How can the U.S. Government coordinate and collaborate on an ongoing basis with appropriate nongovernmental organizations and private sector entities to implement and update the strategy that the FLETF will produce pursuant to the UFLPA?

Critical to development, implementation of, and updates to the strategy pursuant to UFLPA are open dialogue with business stakeholders, transparency, and due process. As USCIB has repeatedly expressed, engagement with the trade as a partner to help eradicate forced labor rather than as a target to penalize is critical to support our shared goal of removing forced labor from global supply chains. Early engagement with the trade community when suspected illegal activity is identified is key for several reasons. First, it provides clarity and transparency to the trade to address potentially violative situations in real time and before non-compliant cargo reaches the U.S. Second, such engagement will help clarify the distinct differences between enforcement, proof of admissibility, and remediation. Third, and most importantly, such engagement will help advance the eradication of forced labor.

It is essential the U.S. government be aware that U.S. importers are operating in a difficult environment of policy incoherence between (i) the current law and regulations and (ii) the U.S. government endorsed UNGPs. The UNGPs call for due diligence and remediation, and the CBP overall approach is focused on enforcement with a presumption of guilt which does not consider remediation. This presumption upends a fundamental tenant of U.S. law and is disconnected from any consideration of best-practice remediation efforts.

The resulting situation is problematic for importers. If an importer attempts to import from an entity that has been alleged to have forced labor – their shipments will be detained without clarity on the totality of the allegation and investigation or the requisite proof to clear the shipment and allow entry into U.S. commerce. The totality of their efforts to remediate the situation, provide access to remedies, and conduct due diligence at its source as provided by the UNGPs is not fully considered by CBP. In a word, the shipment is cancelled and their efforts to address the situation are disregarded. When an importer stops sourcing from an entity that is found, suspected, or alleged to have forced labor, the decision to "cut and run", where companies completely abandon the market and suppliers has the same result. The shipment is cancelled. And rather than attempt to address and resolve the situation, importers may cut and run from a supplier or region given the regard paid to such efforts by CBP. Thus, DHS needs to develop an enforcement strategy that aligns with the UNGPs and engages the trade as a partner in fighting forced labor in the supply chain and supports and protects companies that find, and correct forced labor rather than criminalizing them. The UFLPA joint strategy can only be successful if the parties work collaboratively, without fear of retribution, and through a process that resolves the policy incoherence.

17. How can the U.S. Government improve coordination with nongovernmental organizations and the private sector to combat forced labor in supply chains, and how can these serve as a model to support implementation of the UFLPA?

In addition to the points outlined above, it is important to recognize the scope and remit of the various agency's responsibilities related to forced labor deterrence and enforcement, and the need for the agencies to engage in work as defined by their remit.

From a CBP perspective, it is important to recall that COAC does not equal all experiences of industry. To provide a broad industry representation, consensus-based, thoughtful, non-sectoral inputs and recommendations should also be considered. As provided above, industry relies on clear documents (e.g., FAQs, ICPs, slick sheets), the WRO and Findings webpage updates, and additional CBP communications

for additional transparency in undertaking efforts to comply with the requirements of Section 307.[32] Additional guidance and transparency that could be provided would be of use to members of the trade.

18. Is there any additional information the FLETF should consider related to how best to implement the UFLPA, including other measures for ensuring that goods mined, produced, or manufactured wholly or in part with forced labor do not enter the United States?

Please see points provided above. We continue to stress the need to engage industry early and often on the topic of forced labor; re-establish partnership and collaboration between CBP and the trade; work to provide an open (not under non-disclosure constraints) dialogue with the trade; leverage existing supply chain due diligence programs should be a significant contributor to meeting the statutory "clear and convincing" standard; and re-enforce the timely adoption of recommendations advanced by the COAC as well as other meaningful consensus pan-sectoral recommendations advanced by organizations like USCIB.

[32] U.S. Dept. Homeland Security, "Fact Sheet on Criminal Authorities for Enforcing Against Forced Labor in China", July 30, 2021.